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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 TACOMA DIVISION

11 ATAIN SPECIALTY INSURANCE
12 COMPANY, a Michigan corporation,

13 Plaintiff,

14 v.

15 AMCE PHYSICIANS GROUP, a Utah for-
16 profit corporation; JEREMY SENSKE, an
17 individual; KATIE N. MOSS, an individual;
18 and CODY L. MACFADYEN, an
19 individual,

20 Defendants.

Case No. 3:21-cv-5689

**ATAIN SPECIALTY INSURANCE
COMPANY'S COMPLAINT FOR
DECLARATORY RELIEF**

21 Plaintiff, Atain Specialty Insurance Company, for its Complaint for Declaratory
22 Relief against defendants AMCE Physicians Group, a Utah for-profit corporation, Jeremy
23 Senske, an individual, Katie N. Moss, an individual and Cody L. MacFayden, an
24 individual, alleges as follows:

I. PARTIES AND JURISDICTION

25 1.1 Plaintiff Atain Specialty Insurance Company ("Atain") is a corporation
26 organized and incorporated under the laws of the State of Michigan with its principal
27 place of business in Farmington Hills, Michigan.

28 1.2 AMCE Physicians Group ("AMCE") is a Utah for-profit corporation with
its principal place of business in Hopper, Utah.

1.3 Jeremy Senske (“Senske”) is an individual residing in Puyallup, Washington.

1.4 Katie N. Moss is an individual residing in Washington.

1.5 Cody L. MacFadyen is an individual residing in Washington.

1.6 This is an action for declaratory judgment pursuant to Declaratory Judgment Act, 28 U.S.C. §§2201-2202 to determine an actual case or controversy between the parties.

1.7 This court has jurisdiction pursuant to 28 U.S.C. §1332 because this matter involves citizens of different states and the amount in controversy exceeds \$75,000.00.

1.8 Venue is proper in the Western District of Washington, Tacoma Division, pursuant to 28 U.S.C. §1391(b)(1) and (c)(2) in that defendant AMCE transacts business within this district, and Defendant Jeremy Senske resides within this district. Venue is also proper in this district pursuant to 28 U.S.C. §1391(b)(2) as the accident giving rise to this Action occurred in this district.

II. FACTUAL ALLEGATIONS

2.1 Atain reasserts the allegations set forth in paragraphs 1.1-1.8 above as though fully set forth herein.

A. **The Atain Policy**

2.2 Atain issued Policy No. CIP387592 to AMCE the policy period July 30, 2019, through July 30, 2020. The policy provides commercial general liability coverage pursuant to the terms, conditions, limitations, exclusions, and endorsements contained therein. A true and correct copy of Policy No. CIP387592 is attached hereto as **Exhibit A** and incorporated herein by reference as if set forth in its entirety.

2.3 The policy affords general liability coverage under Commercial General Liability Coverage Form CG 00 01 (04/13).

2.4 Commercial General Liability Coverage Form CG 00 01 (04/13) includes Coverage A—Bodily Injury and Property Damage Liability, which states:

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply....

* * *

- b.** This insurance applies to “bodily injury” and “property damage” only if:

- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

* * *

2.5 Coverage A—Bodily Injury and Property Damage Liability contains the following exclusion:

2. Exclusions

This insurance does not apply to:

g. Aircraft, Auto Or Watercraft¹

This insurance does not apply to:

* * *

- (2)** “Bodily injury” or “property damage” arising out of or in connection with any “auto” unless as outlined below....

* * *

This exclusion applies to “bodily injury” or “property damage” arising out of any aircraft, “auto”, or watercraft, whether or not owned, maintained, used, rented, leased, hired, loaned, borrowed, or entrusted to others or provided to another by any insured.

This exclusion applies even if the claims allege

¹ As amended by Endorsement AF 000 899 (03/2014)

negligence or other wrongdoing in the supervision, hiring, employment, entrustment, permitting, training or monitoring of others by an insured.

This exclusion applies even if the claims against any insured allege direct or vicarious liability.

This exclusion does not apply to:

* * *

- (3) Parking an “auto” on, or on the ways next to, premises you own or rent, provided the “auto” is not owned by or rented to your or any insured.

* * *

2.6 Commercial General Liability Coverage Form CG 00 01 (04/13) defines “auto” as:

2. “Auto” means:

- a.** A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b.** Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

2.7 Commercial General Liability Coverage Form CG 00 01 (04/13) includes Coverage B—Personal And Advertising Injury Liability, which states:

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply....

* * *

- b.** This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage

territory” during the policy period.

2.8 Commercial General Liability Coverage Form CG 00 01 (04/13) defines “personal and advertising injury” as follows:

- 14.** “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:
- a.** False arrest, detention or imprisonment;
 - b.** Malicious prosecution;
 - c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
 - e.** Oral or written publication, in any manner, of material that violates a person’s right of privacy;
 - f.** The use of another’s advertising idea in your “advertisement”; or
 - g.** Infringing upon another’s copyright, trade dress or slogan in your “advertisement”.

2.9 Coverage Form CG 00 01 (04/13) includes **COVERAGE C—MEDICAL PAYMENTS**, which states:

1. Insuring Agreement

- a.** We will pay medical expenses as described below for “bodily injury” caused by an accident:

* * *

(3) Because of your operations; provided that:

- (a)** The accident takes place in the “coverage territory” and during the policy period;

* * *

2. Exclusions

We will not pay expenses for “bodily injury”:

1 **g. Coverage A Exclusions**

2 Excluded under Coverage A.

3 2.10 Commercial General Liability Coverage Form CG 00 01 (04/13) contains
4 the following provision:

5 **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

- 6 **1.** We will pay, with respect to any claim we investigate or settle,
7 or any “suit” against an insured we defend:

8 * * *

- 9 **e.** All court costs taxed against the insured in the “suit”.
10 However, these payments do not include attorneys’ fees
or attorneys’ expenses taxed against the insured.

11 **B. The Moss Action**

12 2.11 On July 1, 2021, Katie N. Moss (“Moss”) and Cody L. MacFadyen
13 (“MacFadyen”) filed a Complaint against AMCE and Senske, in the Superior Court of
14 the State of Washington, in and for King County, in an action styled *Katie N. Moss, et al.*
15 *v. AMCE Physicians Group et al.*, Case No. 21-2-08666-3-SEA (“Moss Action”). A true
16 and correct copy of the Complaint is attached hereto as **Exhibit B**.

17 2.12 The Complaint filed in the Moss Action alleges that while performing his
18 job duties for AMCE, Senske consumed alcohol a level of .34 BAC, got behind the wheel
19 of his Chevrolet Tahoe, and subsequently caused a catastrophic automobile collision with
20 Moss and MacFadyen, who sustained life altering injuries as a result.

21 2.13 The Complaint filed in the Moss Action alleges that as a result of the
22 collision, Moss was initially transported to Mason General Hospital in Shelton,
23 Washington and from there was airlifted to Harborview Medical Center.

24 2.14 The Complaint filed in the Moss Action alleges that as a result of the
25 collision, MacFadyen was airlifted from the scene of the collision to Harborview Medical
26 Center.

27 2.15 The Complaint filed in the Moss Action alleges that Moss and MacFayden
28 were severely impacted and significantly injured in the collision.

1 2.16 The Complaint filed in the Moss Action asserts claims for damages
2 against Senske based on his negligent operation of a motor vehicle.

3 2.17 The Complaint filed in the Moss Action asserts claims for damages
4 against AMCE for allowing Senske to drive his motor vehicle on the public roadways and
5 based on the theory of respondeat superior.

6 2.18 Moss and MacFadyen seek an award of special damages and general
7 damages against AMCE and Senske in an amount to be proven at trial, and also seek an
8 award of any and all applicable interest on the judgment, and an award of attorney fees
9 and costs against AMCE and Senske. The amount of damages they seek is in excess of
10 \$75,000.00.

11 **C. Tender of Defense of the Moss Action to Atain and Atain's Response**

12 2.19 On August 11, 2021, AMCE tendered defense of the Moss Action to
13 Atain.

14 2.20 By letter dated August 19, 2021, Atain advised AMCE that it was
15 accepting the defense of the Moss Action subject to a full and complete reservation of its
16 rights to decline coverage—including any duty to defend or indemnify AMCE and
17 Senske—against the claims asserted in the Moss Action. A true and correct copy of
18 Atain's reservation of rights letter is attached as **Exhibit C**.

19 2.21 By letter dated August 19, 2021, Atain advised Senske that it was
20 accepting the defense of the Moss Action subject to a full and complete reservation of its
21 rights to decline coverage—including any duty to defend or indemnify Senske—against
22 the claims asserted in the Moss Action. A true and correct copy of Atain's reservation of
23 rights letters as sent to Senske is attached as **Exhibit D**.

24 2.22 Atain appointed separate defense counsel to represent AMCE and Senske
25 in the Moss Action and is paying for their defenses.

26 **III. CAUSES OF ACTION**

27 **A. First Cause of Action—No Duty to Defend Under Coverage A**

28 3.1 Atain incorporates by reference as if fully set forth herein, the allegations

1 in Paragraphs 1.1 through 2.22.

2 3.2 Moss and MacFadyen seek damages for injuries they sustained as a result
3 of an automobile collision.

4 3.3 Coverage A—Bodily Injury And Property Damage Liability contains an
5 “Auto Exclusion” that eliminates coverage for “Bodily injury” or “property damage”
6 arising out of or in connection with any “auto.”

7 3.4 The “Auto Exclusion” eliminates coverage for “bodily injury” or
8 “property damage” arising out of or in connection with any “auto” whether or not owned,
9 maintained, used, rented, leased, hired, loaned, borrowed, or entrusted to others or
10 provided to another by any insured.

11 3.5 The “Auto Exclusion” in the Atain policy applies to claims asserted
12 against any insured based on its negligence or wrongdoing in the supervision, hiring,
13 employment, entrusting, permitting, training, or monitoring of others.

14 3.6 The “Auto Exclusion” in the Atain policy applies even if the claims
15 against any insured allege direct or vicarious liability.

16 3.7 The “Auto Exclusion” in the Atain policy eliminates all potential for
17 coverage for the claims asserted against AMCE and Senske in the Moss Action, under the
18 Coverage A Bodily Injury and Property Damage Liability portion of the Atain policy, as
19 a matter of law.

20 3.8 An actual controversy has arisen and now exists between Atain, on the one
21 hand, and Defendants AMCE and Senske, on the other hand, concerning their respective
22 rights and duties under the policies and applicable law.

23 3.9 Atain contends it has no duty to defend Defendants AMCE and Senske
24 against the claims asserted in the Moss Action under the Coverage A Bodily Injury and
25 Property Damage Liability portion of its policy as all potential for coverage for those
26 claims is eliminated by the “Auto Exclusion.”

27 3.10 Atain is informed and believes that Defendants AMCE and Senske,
28 dispute Atain’s coverage position and contend that Atain is obligated to afford them a

1 defense to the claims asserted in the Moss Action under this portion of the policy.

2 3.11 Atain therefore desires a judicial determination of its rights and liabilities,
3 if any, and a declaration that it has no duty to defend Defendants AMCE and Senske,
4 against the claims and causes of action asserted in the Moss Action under the Coverage A
5 Bodily Injury And Property Damage Liability portion of its policy and that it may
6 withdraw from the defense of AMCE and Senske in the Moss Action.

7 3.12 Such declaration is necessary and appropriate because Atain has no plain,
8 speedy, or adequate remedy at law, and by reason of such delay, will suffer great and
9 irreparable injury. Such a declaration is appropriate in order that Atain and Defendants
10 AMCE and Senske may ascertain their respective rights and duties under the policy. Such
11 controversy is incapable of resolution without judicial adjudication.

12 **B. Second Cause of Action—No Duty to Indemnify Under Coverage A**

13 3.13 Atain incorporates by reference as if fully set forth herein, the allegations
14 in Paragraphs 1.1 through 3.9.

15 3.14 For the reasons set forth in Paragraphs 3.2 through 3.7 above, there is no
16 potential for coverage under the Atain policy for any of the claims asserted against
17 AMCE and/or Senske in the Moss Action under the Coverage A Bodily Injury and
18 Property Damage Liability portion of its policy. Additionally, under the terms of the
19 Supplementary Payments Provisions included in the Atain policy, Atain has no obligation
20 to pay any attorneys' fees that may be taxed against Defendants AMCE and Senske in the
21 Moss Action.

22 3.15 Atain therefore has no obligation, under the Coverage A Bodily Injury and
23 Property Damage Liability portion of its policy, to indemnify Defendants AMCE,
24 Senske, Moss or MacFadyen against any settlement that may be entered into by
25 Defendants AMCE and/or Senske with Defendants Moss and MacFadyen to resolve the
26 claims asserted in the Moss Action, or to satisfy any judgment that may be entered
27 against Defendants AMCE and/or Senske in favor of Defendants Moss and MacFadyen
28 in the Moss Action.

1 3.16 For the reasons set forth in Paragraphs 3.2 through 3.7 above, Atain has no
2 obligation to indemnify Moss and MacFadyen under the Coverage A Bodily Injury and
3 Property Damage Liability portion of its policy for the claims asserted by them against
4 AMCE and/or Senske or satisfy any judgment they may seek to enforce against Atain
5 based upon their claims against AMCE and/or Senske.

6 3.17 An actual controversy has arisen and now exists between Atain, on the
7 one hand, and Defendants AMCE, Senske, Moss, and MacFadyen on the other hand,
8 concerning their respective rights and duties under the policies and applicable law.

9 3.18 Atain contends it has no duty to indemnify any settlement that may be
10 entered into by the parties to the Moss Action, to indemnify any judgment entered against
11 AMCE and/or Senske in the Moss Action, or to satisfy any judgment Moss and
12 MacFadyen may obtain against AMCE and/or Senske in the Moss Action and seek to
13 enforce against Atain under the Coverage A Bodily Injury And Property Damage portion
14 of the policy as all potential for coverage for those claims is eliminated by the “Auto
15 Exclusion.”

16 3.19 Atain is informed and believes that Defendants AMCE, Senske, Moss, and
17 MacFadyen dispute Atain’s coverage position and contend that Atain is obligated to
18 indemnify any settlement that may be entered into by the parties to the Moss Action or to
19 indemnify any judgment entered against AMCE and/or Senske in the Moss Action under
20 this portion of the policy.

21 3.20 Atain therefore desires a judicial determination of its rights and liabilities,
22 if any, and a declaration that it has no duty to indemnify any settlement that may be
23 entered into by the parties to the Moss Action, to indemnify any judgment entered against
24 AMCE and/or Senske in the Moss Action, or to indemnify any judgment Moss and/or
25 MacFadyen may obtain against AMCE and/or Senske and seek to enforce against Atain,
26 under the Coverage A Bodily Injury And Property Damage Liability portion of the policy

27 3.21 Such declaration is necessary and appropriate because Atain has no plain,
28 speedy, or adequate remedy at law, and by reason of such delay, will suffer great and

1 irreparable injury. Such a declaration is appropriate in order that Atain and Defendants
2 AMCE, Senske, Moss and MacFadyen may ascertain their respective rights and duties
3 under the policy. Such controversy is incapable of resolution without judicial
4 adjudication.

5 **C. Third Cause of Action—No Duty to Defend Under Coverage B**

6 3.22 Atain incorporates by reference as if fully set forth herein, the allegations
7 in Paragraphs 1.1 through 3.21.

8 3.23 Moss and MacFadyen seek damages for injuries they sustained as a result
9 of an automobile collision.

10 3.24 The Coverage B—Personal And Advertising Injury Liability portion of
11 the Atain policy provides coverage for injuries arising out of certain offenses that
12 comprise “personal and advertising injury” as that term is defined by the Atain policy.

13 3.25 The claims asserted against AMCE and Senske in the Moss Action do not
14 arise out of any of the offenses that comprise “personal and advertising injury” as that
15 term is defined by the Atain policy.

16 3.26 Because the Complaint in the Moss Action fails to assert claims for
17 damages as a result of “personal and advertising injury,” those claims do not fall within
18 the scope of the Coverage B insuring agreement, and Atain has no obligation to defend
19 ACME or Senske under this portion of its policy, as a matter of law.

20 3.27 An actual controversy has arisen and now exists between Atain, on the one
21 hand, and Defendants AMCE and Senske, on the other hand, concerning their respective
22 rights and duties under the policies and applicable law.

23 3.28 Atain contends it has no duty to defend Defendants AMCE and Senske
24 against the claims asserted in the Moss Action under the Coverage B Personal And
25 Advertising Injury Liability portion of its policy as the claims asserted against them in the
26 Moss Action do not fall within the scope of the Coverage B insuring agreement.

27 3.29 Atain is informed and believes that Defendants AMCE and Senske,
28 dispute Atain’s coverage position and contend that Atain is obligated to defend them

1 against the claims asserted in the Moss Action under this portion of the policy.

2 3.30 Atain therefore desires a judicial determination of its rights and liabilities,
3 if any, and a declaration that it has no duty defend AMCE or Senske under the Coverage
4 B portion of the policy.

5 3.31 Such declaration is necessary and appropriate because Atain has no plain,
6 speedy, or adequate remedy at law, and by reason of such delay, will suffer great and
7 irreparable injury. Such a declaration is appropriate in order that Atain and Defendants
8 AMCE and Senske may ascertain their respective rights and duties under the policy. Such
9 controversy is incapable of resolution without judicial adjudication.

10 **D. Fourth Cause of Action—No Duty to Indemnify Under Coverage B**

11 3.32 Atain incorporates by reference as if fully set forth herein, the allegations
12 in Paragraphs 1.1 through 3.31.

13 3.33 For the reasons set forth in Paragraphs 3.23 through 3.26 above, there is
14 no potential for coverage under the Atain policy for any of the claims asserted against
15 AMCE and/or Senske in the Moss Action under the Coverage B Personal And
16 Advertising Injury Liability portion of its policy. Additionally, under the terms of the
17 Supplementary Payments Provisions included in the Atain policy, Atain has no obligation
18 to pay any attorneys' fees that may be taxed against Defendants AMCE and Senske in the
19 Moss Action.

20 3.34 Atain therefore has no obligation, under the Coverage B Personal And
21 Advertising Injury Liability portion of its policy, to indemnify Defendants AMCE,
22 Senske, Moss or MacFadyen against any settlement that may be entered into by
23 Defendants AMCE and Senske with Defendants Moss and MacFadyen to resolve the
24 claims asserted in the Moss Action, or to satisfy any judgment that may be entered
25 against Defendants AMCE and Senske in favor of Defendants Moss and MacFadyen in
26 the Moss Action.

27 3.35 For the reasons set forth in Paragraphs 3.23 through 3.26 above, Atain has
28 no obligation to indemnify Moss and MacFadyen under the Coverage B Personal And

1 Advertising Injury Liability portion of its policy for the claims asserted by them against
2 AMCE and/or Senske or satisfy any settlement or judgment they may seek to enforce
3 against Atain based upon their claims against AMCE or Senske.

4 3.36 An actual controversy has arisen and now exists between Atain, on the
5 one hand, and Defendants AMCE, Senske, Moss, and MacFadyen on the other hand,
6 concerning their respective rights and duties under the policies and applicable law.

7 3.37 Atain contends it has no duty to indemnify any settlement that may be
8 entered into by the parties to the Moss Action, to indemnify any judgment entered against
9 AMCE and/or Senske in the Moss Action, or to satisfy any judgment Moss and
10 MacFadyen may obtain against AMCE and/or Senske in the Moss Action and seek to
11 enforce against Atain under the Coverage B Personal And Advertising Injury Liability
12 portion of the policy as all potential for coverage for those claims is eliminated by the
13 “Auto Exclusion.”

14 3.38 Atain is informed and believes that Defendants AMCE, Senske, Moss, and
15 MacFadyen dispute Atain’s coverage position and contend that Atain is obligated to
16 indemnify any settlement that may be entered into by the parties to the Moss Action or to
17 indemnify any judgment entered against AMCE and/or Senske in the Moss Action under
18 this portion of the policy.

19 3.39 Atain therefore desires a judicial determination of its rights and liabilities,
20 if any, and a declaration that it has no duty to indemnify any settlement that may be
21 entered into by the parties to the Moss Action, to indemnify any judgment entered against
22 AMCE and/or Senske in the Moss Action, or to indemnify any judgment Moss and/or
23 MacFadyen may obtain against AMCE and/or Senske and seek to enforce against Atain,
24 under the Coverage B Personal And Advertising Injury Liability portion of the policy

25 3.40 Such declaration is necessary and appropriate because Atain has no plain,
26 speedy, or adequate remedy at law, and by reason of such delay, will suffer great and
27 irreparable injury. Such a declaration is appropriate in order that Atain and Defendants
28 AMCE, Senske, Moss, and MacFadyen may ascertain their respective rights and duties

1 under the policy. Such controversy is incapable of resolution without judicial
2 adjudication.

3 **E. Fifth Cause of Action—No Duty to Pay Benefits Under Coverage C**

4 3.41 Atain incorporates by reference as if fully set forth herein, the allegations
5 in Paragraphs 1.1 through 3.40.

6 3.42 The Atain policy affords coverage for medical expenses for “bodily
7 injury” caused by an accident because of AMCE’s operations, subject to the exclusions
8 set forth under Coverage A.

9 3.43 As set forth under Paragraph 3.2 through 3.7 above, the Coverage A
10 exclusions eliminate all coverage for “bodily injury” arising out of or in connection with
11 any “auto,” Atain has no obligation to pay benefits to Moss or MacFadyen under
12 Coverage C.

13 3.44 An actual controversy has arisen and now exists between Atain, on the one
14 hand, and Defendants AMCE, Senske, Moss, and MacFadyen on the other hand,
15 concerning their respective rights and duties under the policies and applicable law with
16 respect to Coverage C.

17 3.45 Atain contends it has no duty to pay benefits to Moss or MacFadyen under
18 Coverage C, as all potential coverage under this portion of the policy is eliminated by
19 Exclusion g, which incorporates by reference the “Auto Exclusion” under Coverage A.

20 3.46 Atain is informed and believes that Defendants AMCE, Senske, Moss and
21 MacFadyen dispute Atain’s coverage position and contend that Atain is obligated to pay
22 benefits under Coverage C for the “bodily injury” sustained by Moss and MacFadyen as a
23 result of the collision.

24 3.47 Atain therefore desires a judicial determination of its rights and liabilities,
25 if any, and a declaration that it has no duty to pay medical benefits under the Coverage C
26 portion of its policy.

27 3.48 Such declaration is necessary and appropriate because Atain has no plain,
28 speedy, or adequate remedy at law, and by reason of such delay, will suffer great and

1 irreparable injury. Such a declaration is appropriate in order that Atain and Defendants
 2 AMCE, Senske, Moss, and MacFadyen may ascertain their respective rights and duties
 3 under the Coverage C portion of the policy. Such controversy is incapable of resolution
 4 without judicial adjudication.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiff Atain prays for relief as follows:

- 7 A. Under the First Cause of Action, for a declaration in its favor that Atain
 8 has no obligation to defend AMCE or Senske against the claims asserted
 9 in the Moss Action under the Coverage A portion of Policy No.
 10 CIP387592, and may withdraw from the defense of the Moss Action;
- 11 B. Under the Second Cause of Action, for a declaration in its favor that Atain
 12 has no obligation, under the Coverage A portion of its policy, to indemnify
 13 Defendants AMCE, Senske, Moss or MacFadyen against any settlement
 14 that may be entered into by the parties to the Moss Action, to satisfy any
 15 judgment that may be entered against Defendants AMCE and/or Senske in
 16 favor of Defendants Moss and/or MacFadyen in the Moss Action, or to
 17 satisfy any judgment Moss and/or MacFadyen may obtain in the Moss
 18 Action and seek to enforced against Atain;
- 19 C. Under the Third Cause of Action, for a declaration in its favor that Atain
 20 has no obligation to defend AMCE or Senske against the claims asserted
 21 in the Moss Action under the Coverage B portion of Policy No.
 22 CIP387592, and may withdraw from the defense of the Moss Action;
- 23 D. Under the Fourth Cause of Action, for a declaration in its favor that Atain
 24 has no obligation, under the Coverage B portion of its policy, to indemnify
 25 Defendants AMCE, Senske, Moss or MacFadyen against any settlement
 26 that may be entered into by the parties to the Moss Action, to satisfy any
 27 judgment that may be entered against Defendants AMCE and/or Senske in
 28 favor of Defendants Moss and/or MacFadyen in the Moss Action, or to

1 satisfy any judgment Moss and/or MacFadyen may obtain in the Moss
2 Action and seek to enforced against Atain;

3 E. Under the Fifth Cause of Action, that Atain has no obligation to pay
4 medical benefits to Moss or MacFadyen under the Coverage C portion of
5 the policy;

6 F. For costs and attorney fees to the extent permitted by law; and

7 G. For such other and further relief as this court may deem just and equitable.

8 Dated: September 17, 2021

MOKRI VANIS & JONES, LLP

9 /s/ GailAnn Y. Stargardter

10 GailAnn Y. Stargardter (Bar No. 18179)
11 4100 Newport Place Drive, Suite 840
12 Newport Beach, CA 92660
13 T:: 949-226-7040/ F: 949.226-7150 Email:
14 gstargardter@mvjllp.com

15 Attorneys for Plaintiff
16 ATAIN SPECIALTY INSURANCE COMPANY
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